

GREGORY DONNELLY

BILLERICA H.O.C.

269 TREBLE COVE RD. BILLERICA, MA. 01862

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U.S. DISTRICT COURT JUDGE, RYA W. ZOBEL
UNITED STATES DISTRICT COURT FOR MASSACHUSETTS
1 COURTHOUSE WAY

BOSTON, MA. 02210

JULY 5, 2005

RE: GREGORY DONNELLY V. BERNARD BRADY
U.S.D.C. CIV. NO 04-12706 RWZ

DEAR U.S. DISTRICT COURT JUSTICE, - RYA W. ZOBEL,

YOUR HONOR, I'M WRITING YOU RESPECTFULLY
ASKING THAT YOU PLEASE TAKE UNDER CONSIDERATION THE
FOLLOWING APPLYING SUCH FACTS TO THIS PETITIONER'S
APPLICATION FOR A WRIT ~~OF~~ HABEAS CORPUS - 28 U.S.C. SEC
2254 AND PETITIONER'S OPPOSITION TO THE RESPONDENT'S
MOTION TO DISMISS PETITION FILED WITH THIS HONORABLE
COURT;

1) AFTER MANY YEARS OF LITIGATION IN THE MASSACHUSETTS
STATE COURTS FOLLOWING DILIGENTLY THE ADVISE, DIRECTIONS,
AND ORDERS OF ALL STATE COURTS AND ATTORNEY'S IN THE
ABOVE MATTER TO CORRECT MY SENTENCE, THE COMMONWEALTH
(MIDDLESEX ASS. DISTRICT ATTORNEY, MARQUERITE T. GRANT) HAS

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FINALLY ADMITTED DURING ORAL ARGUMENTS BEFORE THE MASSACHUSETTS APPEALS COURT ON DEC 1, 2003 THAT A "MISTAKE" HAD BEEN MADE REGARDING MY SENTENCING PLEA PROMISE, FURTHER, MARQUERITE GRANT (COMMONWEALTH) STATED TO THE MASSACHUSETT APPEAL COURT JUSTICES THAT THIS "MUTUAL MISTAKE" OR "MISUNDERSTANDING" WAS MADE BETWEEN MIDDLESEX SUPERIOR COURT JUDGE REGINA QUINLIN AND THE ASS. DISTRICT ATTORNEY CRISPIN BIRNBHUM (SEE NOTICE OF ORAL ARGUMENTS EXHIBITS H AND B)

2) DURING THE ORAL ARGUMENTS IN THIS CASE ON DECEMBER 1, 2003 VIA PHONE CONFERENCE FROM MASSACHUSETTS STATE PRISON, OLD COLONY CORRECTIONAL CENTER (OCCC), MIDDLESEX DISTRICT ATTORNEY'S OFFICE, AND THE MASSACHUSETTS APPEALS COURT, . . . MASS. APP CT. JUSTICE BROWN ASKED THIS PETITIONER, "WAS THERE A PROMISE MADE REGARDING MY SENTENCE AGREEMENT,"? . . . I ANSWERED "YES", MASS. APP CT. JUSTICE BROWN THEN ASKED ASS. DISTRICT ATTORNEY MARQUERITE T. GRANT, "WAS THERE A PROMISE MADE TO DONNELLY REGARDING HIS SENTENCE"? MARQUERITE GRANT (ASS. DISTRICT ATTORNEY) ANSWERED "YES", BUT THERE WAS A "MUTUAL MISTAKE OR MISUNDERSTANDING" BETWEEN THE

SENTENCING JUDGE REGINA L. QUINLAN AND THE
ASS DISTRICT ATTORNEY CRISPIN BIRNBAUM AT THE TIME OF
SAID PLEA AGREEMENT." . MASS. APP. CT. JUSTICE BROOKS
THEN STATED "WHY DIDN'T YOU JUST CORRECT THE
SENTENCE" (SEE MASS. APP. CT. 2003-P-186, EXHIBIT C,
REPLY BRIEF, EXHIBIT D, AND APP CT ORDER DENYING
RULE 30 MOTION TO CORRECT SENTENCE, EXHIBIT E).

3) THE MASSACHUSETTS APPEALS COURT ORDER (EXHIBIT E)
WRITES; "THE COMMONWEALTH WAS NOT MISTAKEN AS TO
THE APPLICABLE LAW", SENTENCING AGREEMENT. — IF THIS
BE THE FACTS THEN THIS PETITIONER WAS SANDBAGED — BAIT
AND SWITCHED TO PLEAD GUILTY. THERE WAS "NO" CONFUSION
AS TO THE PROMISES MADE BY THE PROSECUTOR TO THIS
PETITIONER (SEE PETITIONER'S AFFIDAVIT, EXHIBIT F) OR
PETITIONER'S ATTORNEY (SEE DEFENSE ATTORNEY'S AFFIDAVIT
EXHIBIT G) IN EXCHANGE FOR PETITIONER'S GUILTY PLEA.
THIS PLEA AGREEMENT PROMISE TOOK ALL MORNING WITH
ALL PARTIES INVOLVED INCLUDING THE SENTENCING
JUDGE (REGINA QUINLAN) AND THE VICTIMS FAMILY OF

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OF THIS TRAGEDY (MOTOR VEHICLE HOMICIDE), (SEE
SENTENCING TRANSCRIPTS EXHIBIT H)

4) THIS PETITIONER FILED APPLICATION FOR FURTHER
APPELLATE REVIEW WITH THE MASSACHUSETTS SUPREME
JUDICIAL COURT (SEE EXHIBIT I), RECEIVING ON
OCTOBER 27, 2004 THE S J C NOTICE OF DENIAL
OF F.A.R. APPLICATION (SEE EXHIBIT J).

5) THE MASSACHUSETTS APPEALS COURT ADOPTED THE
REMEDY OF "SPECIFIC PERFORMANCE" "WHEN A PLEA RESTS
IN ANY SIGNIFICANT DEGREE ON A PROMISE OR AGREEMENT
OF THE PROSECUTOR", SEE COMM V. PARZYCK, 41 MASS APP
CT. 195 (1996), QUOTING FROM UNITED STATES V.
KURKCUKER 918 F.2ND 295, 300 (1ST CIR 1990), (SEE pgs 9-14
PETITIONER'S APPLICATION FOR F.A.R., MASS SUPREME
JUDICIAL COURT EXHIBIT I., NOTE: COMM V. PARZYCK
41 MASS APP CT. 195 (1996) CAME DOWN ONE MONTH
AFTER THE MASS. APP. CT. RULED ON COMM. V. DONNELLY,
41 MASS APP CT 1101 (1996), ALSO SEE PETITIONER'S

MEMORANDUM IN SUPPORT OF PETITIONER'S APPLICATION
FOR A WRIT OF HABEAS CORPUS . . . 28 U.S.C. SEC 2254,
PAGES 6-9.

6) THIS PETITIONER HAS CLEARLY DEMONSTRATED HIS CONSTANT AND DILIGENT PURSUITE IN THE CORRECTION OF HIS SENTENCE IN THE NUMEROUS FILINGS, ATTORNEY REPRESENTATIONS/ADVISE, AND FOLLOWING ALL MASS. STATE COURTS ORDERS IN THIS CASE FROM THE ONSET OF THE BREACH OF HIS PLEA PROMISES AT SENTENCING.

7) PETITIONER'S UNDERSTANDING OF MASS R. CRIM. P. 30 IS THAT ALTHOUGH PETITIONER HAS FILED NUMEROUS MOTIONS/PETITION'S IN THIS MATTER TO SEEK THE PROMISES MADE TO HIM AT SENTENCING (SEE EXHIBITS F, G, & H) IN EXCHANGE FOR HIS GUILTY PLEA, MASS. R. CRIM. P. 30, PROVIDE[S] REMEDIES FOR PERSONS WHO HAVE BEEN IMPRISONED IN VIOLATION OF STATE AND FEDERAL LAWS (SEE PETITION PAGES 9-14) AS IN THIS CASE, "THERE ARE NO TIME LIMITATIONS FOR FILING A RULE 30

MOTION, AND AN INDIVIDUAL CAN FILE MULTIPLE RULE 30 MOTIONS" (SEE, MASS R. CRIM. P. 30), THE MASSACHUSETTS SUPREME JUDICIAL COURT HAS HELD THAT A RULE 30 MOTION IS THE "EXCLUSIVE VEHICLE FOR POSTCONVICTION RELIEF" IN MASSACHUSETTS.

LEASTER V. COMM. 432 N.E. 2ND 708 (MASS 1982), (RODRIGUEZ V. SPENCER, U.S. COURT OF APPEALS, NO. 03-2139

8) ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (A.E.D.P.H.) ALLOWS ONE YEAR FROM THE DATE OF THE DENIAL OF YOUR "DIRECT APPEAL" TO FILE A FEDERAL HABE. AT FIRST GLANCE THAT WOULD SEEM TO PREVENT PETITIONER FROM USING A HABE., HOWEVER, PETITIONER "NEVER" HAD A DIRECT APPEAL IN THE FIRST PLACE, FURTHER, ON OCTOBER 27, 2004 THE S.J.C. OF MASSACHUSETTS DENIED THE DUE PROCESS CLAIM (SEE EXHIBITS I-J) WHICH WAS THE ONLY TIME DURING THE YEARS OF DILIGENT LITIGATION IN THIS CASE PETITIONER'S ISSUE WAS ADDRESSED BY THE STATE COURT, HENCE, THAT IS THE DATE

HONORABLE RYAN W. COBLE

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PETITIONER'S DIRECT APPEAL/APPEAL BREACH
OCCURRED. (SEE EXHIBITS I AND J PAGES 9-14,
AND PAGES 14-18.)

CONCLUSION

WHEREFORE! THIS HONORABLE COURT SHOULD DENY
RESPONDENTS MOTION TO DISMISS PETITIONER'S WRIT
FOR HABEAS CORPUS PURSUANT TO 28 U.S.C. SEC 2254
AND GRANT DONNELLY'S PETITION FOR WRIT OF HABEAS
CORPUS, ORDERING SPECIFIC ENFORCEMENT TO THE
TERMS OF SENTENCING PROMISE (EXHIBITS F, G, H) AND
SEE PETITION PAGES 14-18)

DATED JULY 5, 2005

RESPECTFULLY SUBMITTED

Gregory Donnelly

GREGORY DONNELLY, PRO. SE.
269 TREBLE COVE RD
BILLERICA, MASS. 01862

CERTIFICATE OF SERVICE

I, GREGORY DONNELLY, DO HEREBY
CERTIFY THAT I HAVE SERVED A COPY OF
THE ABOVE PLEADING ON THE ATTORNEY FOR
THE RESPONDENT, BY MAILING SAID FIRST CLASS
POSTAGE PAID ADDRESSED,

RANDALL RAVITZ
ASS ATTORNEY GENERAL
CRIMINAL BUREAU
ONE ASHBURTON PLACE
BOSTON, MA. 02108

DATED JULY 5, 2005

Gregory Donnelly
GREGORY DONNELLY, PRO SE.